

# **EXHIBIT 5**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

FOREST LABORATORIES,	:	
INC., FOREST	:	
LABORATORIES IRELAND,	:	
LTD., H. LUNDBECK A/S,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 03-891/04-1244 JJF
	:	<b>CONSOLIDATED ACTIONS</b>
IVAX PHARMACEUTICALS,	:	
INC., CIPLA LTD.,	:	
	:	
Defendants.	:	
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FOREST LABORATORIES,	:	
INC., FOREST	:	
LABORATORIES IRELAND,	:	
LTD., H. LUNDBECK A/S,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
ALPHAPHARM PTY LTD.,	:	
	:	
Defendant.	:	

**O R D E R**

WHEREAS, Defendant Cipla Ltd. ("Cipla") filed a Motion To Dismiss Amended Complaint For Lack Of Subject Matter Jurisdiction (D.I. 47);

WHEREAS, by its motion, Cipla contends that the Court lacks jurisdiction because the Hatch-Waxman Act does not confer subject matter jurisdiction over the aiding and abetting of an ANDA filing;

WHEREAS, the Court agrees with Cipla's contention, but finds that a claim for inducement of infringement may nevertheless be

premised on section 271(e)(2), Allergan v. Alcon Labs., 324 F.3d 1322, 1330 (Fed Cir. 2003);

WHEREAS, such an inquiry is not focused on the ANDA filing, but on the ANDA product to be sold if approved by the FDA, AstraZeneca AB v. Mylan Labs., 265 F.Supp.2d 213, 217-18 (citing Glaxo, Inc. v. Novopharm, Ltd., 110 F.3d 1562, 1568 (Fed. Cir. 1997));

WHEREAS, the Court finds that Plaintiff's Complaint alleges that, if the ANDA filing is approved, (1) the drug will infringe the '712 patent under section 271 and (2) Cipla will induce that infringement by importing the products into the United States or selling the products to Ivax within the United States for subsequent sale by Ivax;

NOW THEREFORE, IT IS HEREBY ORDERED that Cipla's Motion To Dismiss Amended Complaint For Lack Of Subject Matter Jurisdiction (D.I. 47) is DENIED.

March 23, 2005  
DATE

  
UNITED STATES DISTRICT JUDGE